

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "ए" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI
BEFORE HON'BLE S/SHRI JOGINDER SINGH (JM), AND RAJESH KUMAR,(AM)

आयकर अपील सं./I.T.A. No.2578/Mum/2014
(निर्धारण वर्ष / Assessment Year :2010-11)

M/s Aakash Projects and Infrastructures Pvt. Ltd, Santacruz Airport Side, Marble Market, Western Express High way, Vile Parle (E), Mumbai-400099	बनाम/ Vs.	The Asstt.. Commissioner of Income Tax- Range-8-1, Aayakar Bhavan, M K Road, Mumbai-400020
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./PAN No. : AAGCA0058H

अपीलार्थी ओर से / Appellant by:	Shri Vimal Punmiya
प्रत्यर्थी की ओर से/Respondent by	Shri Saurabh Deshpande

सुनवाई की तारीख / Date of Hearing : 31.8.2017

घोषणा की तारीख /Date of Pronouncement : 25.10.2017

आदेश / O R D E R

Per RAJESH KUMAR, Accountant Member:

This is an appeal filed by the assessee and it is directed against the order of the Ld. CIT(A)-16, Mumbai, dated 27.1.2014 pertaining to A.Y.2010-11.

2. Only issue raised in this appeal is against the confirmation of addition Rs.25 lakhs by the Id.CIT(A) as made by the AO u/s 68 on account of loan received from M/s Nicco Securities Private Limited on the ground that the notice issued u/s 133(6) was returned unserved and without appreciating the

facts that the identity, creditworthiness of the party and genuineness of the transaction have been proved.

3. Facts of the case are the assessee filed return of income on 17.9.2010 declaring total income of Rs.80,180/- which was processed u/s 143(1) of the Act. Subsequently the case was selected for scrutiny and proceedings u/s 143(2) and 142(1) were followed. During the assessment proceedings, the AO noted that the assessee availed loans from various parties for which the confirmations were filed by the assessee. The AO in order to verify the genuineness of these loans issued notices u/s 133(6) of the Act. However, the noticed issued to M/s Nicco Securities Ltd returned unserved. Thereafter, the assessee was called upon to prove the identity and creditworthiness of the parties, and genuineness of the transaction. The assessee in reply filed a copy of ledger account and bank statement on 14.2.2013. In the mean time an intimation about loans by M/s Nicco Securities Pvt Ltd was sent to the ITO 2(2)(3), the jurisdictional AO who in turn informed the AO that M/s Nicco Securities Pvt Ltd was not traceable. Thereafter, the AO allowed one more opportunity on 19.2.2013 calling upon the assessee to file necessary details as mentioned in para no.2.3 of the assessment order to prove the genuineness of the transaction but no details of the loan as called for by the AO was provided by the assessee. Finally, the AO concluded that the assessee could not prove the source of source and accordingly added the same to the total income of the assessee u/s 68 of the Act by framing the assessment u/s 143(3) assessing the

income at Rs.25,80,176/-. In the appellate proceedings, the Id.CIT(A) after considering the submissions of the assessee dismissed the appeal of the assessee by observing that the assessee could not prove the genuineness of the transactions with necessary documentary evidences that how M/s Nicco Securities Pvt Ltd agreed to convert the loan into share application money. The Id. CIT(A) further noted that Mr.Amar Nath Agarwal, Director of M/s Nicco Securities Pvt Ltd, confirmed the payment and its conversion into share application and allotment but there was no justification for the grant of loan or conversion of loan into share capital. The Id. AR vehemently submitted before us that the Id.CIT(A) has grossly erred in confirming the order of the AO on the issue of unexplained cash credit by submitted that the loan was in fact confirmed by inviting our attention to page 45 of the paper book on which the Id.AR pointed out that the PAN of the lender was duly mentioned and the confirmation was duly signed by the AR of the company. The Id. AR submitted that the said loan was converted into share capital in the assessment year 2011-12. The Id. AR submitted that the office of the company was shifted to Metro and therefore, the notice sent u/s 133(6) was not served on the party. However, thereafter in order to prove the genuineness of the transaction of the said amount before the Id.CIT(A) the assessee filed the confirmation from the party along with the details as the assessment of lender. Considering all these facts the Id.AR submitted before the Bench that the Id. CIT(A) has wrongly affirmed the order of the AO as all the evidences to prove the genuineness of transaction, creditworthiness

and identity of the creditor were proved beyond doubt by the assessee before the lower authorities and hence he prayed that the addition made by the AO and confirmed by the Id. CIT(A) be deleted.

4. On the other hand, the Id.DR relied heavily on the orders of authorities below by submitting that the assessee was granted sufficient opportunities to prove the genuineness of transaction and creditworthiness and credibility of the creditors during the assessment proceedings as well as in the appellate proceedings but even then the genuineness of the said transaction could not be proved. Before the Id. CIT(A) the assessee produced the parties i.e. Director of the Company alongwith the other documentary evidences but the loan could not be satisfactorily proved and its conversion into share capital.

5. We have carefully considered the contentions of the rival parties. We observed that the assessee has filed confirmation of loan which is placed at paper book duly signed by the AR of the lender company besides, PAN, and other evidences and copy of ledger account of the assessee in the books of the lender company was filed duly attested by the authorized signatory of the company as placed at paper book with the income tax return and final accounts of the lender. Under these circumstances, we are of the view that the matter requires further verification at the end of AO of all these evidences and therefore it would be fair, reasonable and in the interest of justice to restore the matter to the file of the AO to examine all these evidences and in the light of said frame the assessment denovo as per facts

and law after providing necessary opportunity of being heard to the assessee.

6. Appeal of the assessee stands allowed for statistical purposes.

The above order was pronounced in the open court on 25th Oct, 2017.

घोषणा खुले न्यायालय में दिनांक: 25th Oct. 2017 को की गई ।

Sd

sd

(JOGINDER SINGH)
Judicial Member

(RAJESH KUMAR)
Accountant Member

मुंबई Mumbai: 25.10.2017

व.नि.स./ SRL , Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned
4. आयकर आयुक्त / CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai concerned
6. गार्ड फाईल / Guard file.

True copy

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai